

June 17, 2005

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REVISED REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E9801132**

BRENDA DEVINE
Code Enforcement Appeal

Location: 16647 Southeast 134th Street

Appellant: **Brenda Devine**
11717 – 25th Avenue South
Seattle, Washington 98168
Telephone: (206) 763-4486

King County: Department of Development and Environmental Services
represented by **Jeri Breazeal**
900 Oakesdale Avenue Southwest
Renton, Washington 98055-1219
Telephone: (206) 296-7264
Facsimile: (206) 296-6604

SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal; extend dates of compliance
Examiner's Decision:	Deny appeal; extend dates of compliance

EXAMINER PROCEEDINGS:

Hearing Opened:	May 11, 2005
Hearing Closed:	May 11, 2005
Initial Decision Issued:	May 27, 2005

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.
A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS OF FACT:

1. On March 18, 2005, the King County Department of Development and Environmental Services (DDES) issued a Notice and Order to Brenda Devine that alleges code violations at property located at 16647 Southeast 134th Street. The Notice and Order cites the property for violations by:
 - “1. Placement of a cargo container without the required permits, inspections and approvals in violation of Sections 16.02.240 and 21A.28.020 of the King County Code and Sections 105.1 and 113.1 of the 2003 International Building Code.
 - “2. Accumulation of inoperable vehicles and vehicle parts throughout the premises of this residential site in violation of Sections 21A.32.230 and 23.10.040 of the King County Code.
 - “3. Parking/storage of vehicles on non-impervious (unimproved) surfaces in violation of Section 21A.18.110 (I) of the King County Code. Parking/storage of vehicles in excess of the number allowed on an R (1-8) zoned residential site with (greater than) 12,500 square feet in violation of Section 21A.18.110 (J) of the King County Code.
 - “4. The operation of a paint spray booth without the required permits, approvals and inspections in violation of International Fire Code Section: 105.6.42.”

The Notice and Order required that by April 18, 2005 the cargo container be either removed from the premises or the subject of a complete application for the required permits, inspections and approvals. Also required was removal of inoperable vehicles and vehicle parts or storage of such items within a fully enclosed building by May 18, 2005. Also by May 18, 2005, all vehicles parked and stored on site were required to be on non-impervious surfaces. In addition, the vehicles parked/stored on the site were required to be reduced to eight or fewer by May 18, 2005, and also limited to vehicles registered to property residents. Lastly, the spray booth operation was required to be ceased or the subject of permit obtainment within 30 days (April 17, 2005).

2. Appellant Devine, owner of the property, filed a timely appeal of the Notice and Order. The appeal does not dispute the violations charged by the Notice, but requests additional time to achieve compliance.
3. The cargo container was placed on the site in February of 2004 and intended to be a temporary placement through August of 2005. The container is difficult to dispose of on short notice without essentially being given away as salvage. It is also cost-prohibitive to obtain a formal permit for such a temporary use. The Appellant requests that the cargo container be allowed to remain until removal no later than August 31, 2005, in order that a reasonable sale may occur rather than a forced immediate one. DDES testified that there is no hazard associated with the placement of the temporary cargo container on site.
4. With respect to the inoperable vehicles on site, there are approximately 29 on the property, more than double the number in 2001 after the property resident (David Anderson) had worked to reduce the number. The vehicle parts in outside storage on the property have been significantly cleared up. While cleaning up the parts situation is laudable, it is only partial work, and the

continued maintenance, in fact a significant increase, of a great number of violating inoperable vehicles in outside storage on the property is a sign of continuing and significant violation. The Examiner concurs with DDES that there has been insufficient progress in abating the presence of inoperable vehicles in outside storage on the property.

5. The Appellant desires an extended timeframe for compliance, noting the numerous difficulties associated with disposing of inoperable vehicles, and also desires not to have to liquidate some of the inoperable vehicles at less than full value.
6. The Appellant claims that County's enforcement actions are unjust and unfairly applied, since there are numerous properties in the immediate vicinity, some well visible from the site, that also have numerous inoperable vehicles in outside storage.
7. The spray booth issue is moot, as no booth had been installed, only a temporary painting setup which has since been removed.
8. DDES desires a relatively tight timeframe to gain compliance, because of the longstanding nature of the violation with respect to inoperable vehicles and what it sees as the lack of good faith sustained progress.
9. The evidence in the record supports a finding that the charges of violation in the Notice and Order are correct, which is reflected by the appeal's lack of defense to the charges and merely a request for additional time to achieve correction.

CONCLUSIONS:

1. The Appellant's argument that it is unfair for the County to engage in code enforcement on the property when other properties have similar violations is an equity issue over which the Examiner has no authority. It is tantamount to a claim of *equitable estoppel*, that the county should be barred from enforcing the matters at hand. The Examiner as a quasi-judicial hearing officer is generally limited to adjudicating matters under "black letter" law, *i.e.*, law enacted in statutory or ordinance form. Washington case law limits the Examiner's exercise of common law in deciding cases. [*Chaussee v. Snohomish County*, 38 Wn. App. 630, 638, 689 P.2d 1084 (1984)] Any equity claim would have to be brought in a court of law.
2. While not unsympathetic to the economics of the situation, the Examiner and the County cannot waive or reduce code requirements merely because of the financial burdens or objectives or the hobby interests of a violating property owner or occupant. If appropriate, reasonable timeframes for correction may act to lessen the difficulties associated with code correction, but any hardship is simply self-imposed.
3. As the storage container is placed on site in violation of County code as charged, charge 1 of the Notice and Order is correct and shall be sustained. The Examiner finds that due to the lack of hazard associated with such placement and the reasonableness of the Appellant's request to be given until the end of August 2005 (approximately three months from this date) to dispose of it in a unforced manner, the Examiner shall grant the period requested.
4. As the outside storage of inoperable vehicles on the property is in violation of County code as charged, charge 2 of the Notice and Order is correct and shall be sustained. The Examiner finds the Appellant's request for a six-month time period for removal to be excessive in length to

correct a longstanding and significant violation, but will allow for a phased removal where the Appellant must show good faith and diligent progress to remove most of the offending vehicles from the site within a reasonable time, and the remainder within a somewhat extended time leading to a total period of six months, and must bring whatever is left on the site into operable status or within interior storage. The reasonable approach taken is reflected in the conditions of the Order below.

5. The parking and storage of vehicles on non-impervious surfaces must be corrected prior to the onset of the rainy season, typically October 1. As the parking/storage of vehicles on non-impervious surfaces on site is in violation of code as charged, charge 3 of the Notice and Order is correct and shall be sustained.
6. There has been no contest in the formal appeal to the charge of operation of a paint spray booth in violation of code; even though the Appellant testified that the painting equipment has been removed. The Notice and Order is sustained with regard to charge 4 of violation.

DECISION:

The appeal is DENIED, except that the deadlines for regulatory compliance are revised and extended as stated in the following revised order.

REVISED ORDER:

1. The cargo container on site shall be removed *by no later than August 31, 2005*, or, alternatively shall be the subject of a complete application for the necessary permits, inspections and approvals for its remaining on site.
2. *By no later than September 30, 2005*, all vehicle parts and all but five of the inoperable vehicles in exterior storage on site shall be removed from the subject property (or brought into interior storage or into operable condition in conformity with code requirements including limitations on numbers and residential status). The remaining inoperable vehicles shall be removed *by no later than November 30, 2005*. In no case after **September 30, 2005** shall any parking/storage of vehicles on site be on non-impervious surfaces in violation of code.
3. The number of vehicles stored outside on site shall conform to KCC 21A.18.110(J) *by no later than November 30, 2005*.
4. Any operation of paint spraying of vehicles on site shall conform to fire code requirements immediately.
5. (Added with revision) If any of the deadlines stated in the above conditions is not met, DDES may assess penalties against the Appellant and the property retroactive to the date of this revised order.

REVISED ORDER ISSUED this 17th day of June, 2005.

Peter T. Donahue, Deputy
King County Hearing Examiner

TRANSMITTED this 17th day of June, 2005 via certified mail to the following:

Brenda Devine
11717 – 25th Avenue South
Seattle, Washington 98168

TRANSMITTED this 17th day of June, 2005, to the following parties and interested persons of record:

David Anderson
16647 SE 134th St.
Renton WA 98059

Brenda Devine
11717 - 25th Ave. S.
Seattle WA 98168

George Perrins
21642 98th Ave. S.
Kent WA 98031

Jeri Breazeal
DDES/LUSD
Code Enf. Section
MS OAK-DE-0100

Suzanne Chan
DDES, Code Enf.
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Elizabeth Deraitus
DDES/LUSD
Code Enf. Supvr.

Trudy Hintz
DDES/LUSD
Site Development Services
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Patricia Malone
DDES/LUSD
Code Enf. Section
MS OAK-DE-0100

Lamar Reed
DDES/LUSD
Code Enf. Section
MS-OAK-DE-0100

NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's revised decision shall be final and conclusive unless proceedings for review of the revised decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's revised decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE MAY 11, 2005, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E9801132.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing was Jeri Breazeal, representing the Department; David Anderson, representing the Appellant; and George Perrins.

The following Exhibits were offered and entered into the record:

- Exhibit No. 1 DDES Staff Report to the Hearing Examiner
- Exhibit No. 2 Copy of the Notice & Order issued March 21, 2005
- Exhibit No. 3 Copy of the Appeal received April 6, 2005
- Exhibit No. 4 Copies of codes cited in the Notice & Order
- Exhibit No. 5 Copy of letter to Ms. Devine from the Washington State Patrol dated February 10, 2005
- Exhibit No. 6 Photographs (9) of the property taken by Jeri Breazeal on October 19, 2004
- Exhibit No. 7 Photographs (6) of the property taken by David Anderson